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Attorneys for Defendants LVMPD, Kerry Kubla, Brice Clements, Alex Gonzales, Russell Backman, James Rothenburg and James Bertuccini

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

LATIA ALEXANDER, individually as heir  
of ISIAAH T. WILLIAMS, and in her  
capacity as Special Administrator of the  
Estate of ISIAAH T. WILLIAMS,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT, a political subdivision of  
the State of Nevada; KERRY KUBLA, in his  
individual capacity; BRICE CLEMENTS, in  
his individual capacity; ALEX GONZALES,  
in his individual capacity; RUSSELL  
BACKMAN, in his individual capacity;  
JAMES ROTHENBURG, in his individual  
capacity; JAMES BERTUCCINI, in his  
individual capacity; MELANIE O'DANIEL,  
in her individual capacity and DOES I-XX,  
inclusive,

Defendants.

KERRY KUBLA,

Counterclaimant,

vs.

LATIA ALEXANDER in her capacity as  
Special Administrator of the Estate of  
ISIAAH T. WILLIAMS,

Counterdefendant.

Case Number:  
2:24-cv-00074-APG-NJK

**DEFENDANTS LVMPD, KERRY  
KUBLA, BRICE CLEMENTS, ALEX  
GONZALES, RUSSELL BACKMAN,  
JAMES ROTHENBURG AND JAMES  
BERTUCCINI'S ANSWER TO  
PLAINTIFF'S FIRST AMENDED  
COMPLAINT (ECF NO. 26)**

1 Defendants Las Vegas Metropolitan Police Department (“LVMPD”), Kerry Kubla,  
2 Brice Clements, Alex Gonzales, Russell Backman, James Rothenburg and James Bertuccini  
3 (“Answering Defendants”), by and through their counsel, Marquis Aurbach, hereby answer  
4 Plaintiff’s First Amended Complaint (ECF No. 26) on file herein, admits, denies and alleges  
5 as follows:

6 **PARTIES, JURISDICTION AND VENUE**

7 1. These Answering Defendants admit the allegations contained in paragraphs  
8 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 15 and 16 of the Plaintiff’s First Amended Complaint.

9 2. These Answering Defendants are without sufficient knowledge to form an  
10 opinion as to the truth of Plaintiff’s allegations contained in paragraphs 11, 12 and 14 of  
11 Plaintiff’s First Amended Complaint, and therefore deny the remaining allegations.

12 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

13 3. These Answering Defendants deny the allegations contained in paragraphs  
14 17, 20, 21, 22, 24, 25, 35, 36, 39, 40, 41 and 43 of the Plaintiff’s First Amended Complaint.

15 4. These Answering Defendants admit the allegations contained in paragraphs  
16 18, 19, 26, 27 and 31 of the Plaintiff’s First Amended Complaint.

17 5. These Answering Defendants are without sufficient knowledge to form an  
18 opinion as to the truth of Plaintiff’s allegations contained in paragraphs 23, 28, 29, 30, 32,  
19 33, 34, 37, 38 and 42 of the Plaintiff’s First Amended Complaint, and therefore deny the  
20 remaining allegations.

21 **FIRST CLAIM FOR RELIEF**

22 **(VIOLATION OF FEDERAL CIVIL RIGHTS UNDER 42 U.S.C. §1983 ET SEQ. –**  
23 **FOURTH AMENDMENT)**

24 6. These Answering Defendants are without sufficient knowledge to form an  
25 opinion as to the truth of Plaintiff’s allegations contained in paragraphs 44, 45 and 47 of the  
26 Plaintiff’s First Amended Complaint, and therefore deny the remaining allegations.

27 7. These Answering Defendants admit the allegations contained in paragraphs  
28 46, 49, 50, 51 and 58 of the Plaintiff’s First Amended Complaint.

1           8.       These Answering Defendants deny the allegations contained in paragraphs  
2 48, 52, 53, 54, 55, 56, 57, 59 and 60 of the Plaintiff's First Amended Complaint

3                               **SECOND CLAIM FOR RELIEF**

4                               **(VIOLATION OF FEDERAL CIVIL RIGHTS 42 U.S.C. §1983 ET SEQ. –**  
5                               **FOURTEENTH AMENDMENT)**

6           9.       These Answering Defendants are without sufficient knowledge to form an  
7 opinion as to the truth of Plaintiff's allegations contained in paragraphs 61 and 62 of the  
8 Plaintiff's First Amended Complaint, and therefore deny the remaining allegations.

9           10.      These Answering Defendants deny the allegations contained in paragraphs  
10 63, 64, 65, 66, 67, 68, 69, 70, 71 and 72 of the Plaintiff's First Amended Complaint.

11                              **THIRD CLAIM FOR RELIEF**

12                              **(VIOLATIONS OF NEVADA CONSTITUTION/CONSTITUTIONAL TORT)**

13           11.      These Answering Defendants are without sufficient knowledge to form an  
14 opinion as to the truth of Plaintiff's allegations contained in paragraphs 73, 74, 75 and 78 of  
15 the Plaintiff's First Amended Complaint, and therefore deny the remaining allegations.

16           12.      These Answering Defendants admit the allegations contained in paragraphs  
17 76, 77, 79, 84 and 87 of the Plaintiff's First Amended Complaint.

18           13.      These Answering Defendants deny the allegations contained in paragraphs  
19 80, 81, 82, 83, 85, 86, 88, 89 and 90 of the Plaintiff's First Amended Complaint

20                              **FOURTH CAUSE OF ACTION**

21                              **(ASSAULT AND BATTERY/WRONGFUL DEATH AND SURVIVORSHIP)**

22           14.      These Answering Defendants are without sufficient knowledge to form an  
23 opinion as to the truth of Plaintiff's allegations contained in paragraphs 91 and 92 of the  
24 Plaintiff's First Amended Complaint, and therefore deny the remaining allegations.

25           15.      These Answering Defendants deny the allegations contained in paragraphs  
26 93, 94, 95, 96, 97, 99 and 100 of the Plaintiff's First Amended Complaint.

27           16.      These Answering Defendants admit the allegations contained in paragraph 98  
28 of the Plaintiff's First Amended Complaint.

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**FIFTH CAUSE OF ACTION**

**(INTENTIONAL OR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS –  
WRONGFUL DEATH AND SURVIVORSHIP)**

17. These Answering Defendants are without sufficient knowledge to form an opinion as to the truth of Plaintiff's allegations contained in paragraphs 101 and 102 of the Plaintiff's First Amended Complaint, and therefore deny the remaining allegations.

18. These Answering Defendants deny the allegations contained in paragraphs 103, 104, 105, 106, 107, 110 and 111 of the Plaintiff's First Amended Complaint.

19. These Answering Defendants admit the allegations contained in paragraphs 108 and 109 of the Plaintiff's First Amended Complaint.

**SIXTH CAUSE OF ACTION**

**(NEGLIGENCE – WRONGFUL DEATH AND SURVIVORSHIP)**

20. These Answering Defendants are without sufficient knowledge to form an opinion as to the truth of Plaintiff's allegations contained in paragraphs 112 and 113 of the Plaintiff's First Amended Complaint, and therefore deny the remaining allegations.

21. These Answering Defendants admit the allegations contained in paragraphs 114, 119 and 120 of the Plaintiff's First Amended Complaint.

22. These Answering Defendants deny the allegations contained in paragraphs 115, 116, 117, 118, 121 and 122 of the Plaintiff's First Amended Complaint.

**SEVENTH CAUSE OF ACTION**

**(MONELL CLAIMS)**

23. These Answering Defendants are without sufficient knowledge to form an opinion as to the truth of Plaintiff's allegations contained in paragraphs 123 and 130 of the Plaintiff's First Amended Complaint, and therefore deny the remaining allegations.

24. These Answering Defendants admit the allegations contained in paragraphs 124, 125 and 137 of the Plaintiff's First Amended Complaint.

25. These Answering Defendants deny the allegations contained in paragraphs 126, 127, 128, 129, 131, 132, 133, 134, 135, 136 and 138 of the Plaintiff's First Amended

Complaint.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's suit fails to state a claim for relief as she failed to allege a violation of a right, privilege, or immunity secured by the United States Constitution or by the laws of the United States.

**SECOND AFFIRMATIVE DEFENSE**

The Answering Individual Defendants are protected by qualified immunity.

**THIRD AFFIRMATIVE DEFENSE**

The complained of acts of these Answering Defendants were justified and privileged under the circumstances.

**FOURTH AFFIRMATIVE DEFENSE**

At all times mentioned in Plaintiff's First Amended Complaint, these Answering Defendants acted in good faith belief that their actions were legally justifiable.

**FIFTH AFFIRMATIVE DEFENSE**

LVMPD did not implement an unconstitutional custom, practice, or policy.

**SIXTH AFFIRMATIVE DEFENSE**

The Plaintiff's claims of constitutional violation are unsupported in both fact and law, as Plaintiff has not alleged sufficient basis from which a constitutional interest might arise in conjunction with the alleged actions.

**SEVENTH AFFIRMATIVE DEFENSE**

To the extent Plaintiff's causes of actions against these Answering Defendants sound in negligence, no recovery can be predicated upon 42 USCA §1983.

**EIGHTH AFFIRMATIVE DEFENSE**

Any injuries allegedly sustained by Plaintiff were the result of Plaintiff/Decedent Isaiah T. Williams' own negligence and/or actions.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff cannot recover punitive or exemplary damages against Defendant LVMPD on her §1983 claims or any state law claims.

**TENTH AFFIRMATIVE DEFENSE**

The state law claims and each of them are barred by NRS 41.032.

**ELEVENTH AFFIRMATIVE DEFENSE**

The claims and each of them are barred by Plaintiffs' failure to plead those claims with particularity.

**TWELFTH AFFIRMATIVE DEFENSE**

These Answering Defendants reserve the right to amend these Affirmative Defenses as discovery unfolds and new information is discovered.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's state law claims are capped pursuant to NRS 41.035.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's state law claims involve discretionary functions for which these Answering Defendants are immune pursuant to NRS 41.032.

WHEREFORE, these Answering Defendants pray for judgment as follows:

1. That Plaintiff takes nothing by virtue of her First Amended Complaint on file herein, that the same be dismissed with prejudice;

2. For an award of reasonable attorney fees and costs of suit incurred in the defense of this action; and

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3. For such other and further relief as this Court may deem just and proper in the premises.

Dated this 20<sup>th</sup> day of August, 2024.

MARQUIS AURBACH

By s/Craig R. Anderson  
Craig R. Anderson, Esq.  
Nevada Bar No. 6882  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorney(s) for Defendants LVMPD, Kerry  
Kubla, Brice Clements, Alex Gonzales,  
Russell Backman, James Rothenburg and  
James Bertuccini

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **DEFENDANTS LVMPD, KERRY KUBLA, BRICE CLEMENTS, ALEX GONZALES, RUSSELL BACKMAN, JAMES ROTHENBURG AND JAMES BERTUCCINI'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on the 20<sup>th</sup> day of August, 2024.

☒ I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

☒ I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants: n/a

s/Sherri Mong  
an employee of Marquis Aurbach